

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.**

**SUMMONS FOR JUDGMENT NO.272 OF 2005
IN
SUMMARY SUIT NO.992 OF 2002**

Sudhir D. Patil. ...Plaintiff.
Vs.
Bombay Alums Pvt. Ltd. ...Defendant.

....
Mr. A. W. Apte for the Plaintiff.
Mr. K.K. V. Kurup for the Defendant.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.
20th March 2007.

P.C.:

The suit under Order 37 of the Code of Civil Procedure, 1908 has been instituted for the recovery of an amount of Rs.6 lakhs in the principal amount of a loan advanced by the Plaintiff to the Defendant on 4th September 2000. The loan was advanced by a cheque drawn on the Saraswat Co-operative Bank, Vashi Branch, Navi Mumbai. On 7th June 2001, the Plaintiff addressed a letter to the Defendant recording the transaction of the loan and calling for a confirmation. The loan was confirmed at the foot of the Plaintiff's letter for and on behalf of the Defendant by Smt.Tillotama Vijay Lele, Director and shareholder.

The earlier Summons for Judgment (Summons for

Judgment 973/02) was withdrawn on 24th November 2003 with liberty to apply afresh after the amendment of the plaint and after giving up the claim for interest. Thereupon the plaint was amended and the present Summons for Judgment was taken out. The Summons for Judgment was made absolute on 7th October 2005 and a decree came to be passed. On a Motion taken out by the Defendant, the decree came to be set aside on the ground that the Defendant had sufficient reasons for absence from the Court when the Summons for Judgment was made absolute.

In the affidavit in reply filed to the Summons for Judgment, the Defendant has chosen to remain totally silent in regard to the confirmation of the loan as on 7th June 2001 (Exh.A to the Plaint). The Defendant has, however, annexed a letter dated 23rd January 2002 addressed by the Defendant to the Plaintiff's Advocate. In para 1 of the said letter, the execution of the confirmation is not disputed and it has been stated that the Plaintiff had obtained a purported confirmation though no amount was due from the Defendant. There is no denial of the fact that the confirmation was issued on behalf of the Defendant. Moreover, save and except for annexing the letter dated 23rd January 2002,

the affidavit in reply dated 9th January 2007 is completely silent in respect of any defence as regards the confirmation of the liability.

There is, therefore, no valid defence to the claim in the suit. However, having regard to the facts and circumstances of the case, I am of the view that the Defendant should be furnished with an opportunity to defend the suit subject to a condition of deposit. In the circumstances, leave to defend is granted to the Defendant conditional on the Defendant depositing an amount of Rs.6 lakhs in this Court within a period of 12 weeks from today. Upon the deposit, the amount shall be invested by the Prothonotary & Senior Master in a fixed deposit of a Nationalized Bank to be renewed periodically thereafter. In the event that the amount as directed is deposited, the Defendant shall file a Written Statement within 8 weeks of the date of deposit.

The Summons for Judgment is disposed of.

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